Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act	)	MB Docket No. 05-181

REPLY COMMENTS OF ECHOSTAR SATELLITE L.L.C.

EchoStar Satellite L.L.C. ("EchoStar") hereby submits its reply comments regarding the Commission's request for comments concerning the implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA").[1] Section 210 amends the satellite carriage requirements for local television broadcast stations in "noncontiguous states." Specifically, it requires the retransmission of local analog broadcast signals, and later, local digital signals, throughout Alaska and Hawaii. EchoStar has long been committed to providing and expanding local satellite service to viewers in these States, having launched local service in Anchorage, Alaska and Honolulu, Hawaii prior to Section 210's enactment. This continuing commitment is further demonstrated by EchoStar's planned launch of local broadcast signals in Fairbanks and Juneau, Alaska.

Comments jointly filed by Encuentro Christian Network and Eastern Television Corporation, and by International Broadcasting Corporation and R y F Television, Inc. (collectively, the "Puerto Rico Stations"), urge the Commission to adopt an interpretation of

[1] *See Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, FCC 05-92, Notice of Proposed Rulemaking, MB Docket No. 05-181 (rel. May. 2, 2005) ("NPRM").

Section 210 that would extend the provision's carriage requirements beyond Alaska and Hawaii to the territories and possessions of the U.S.[2] These commenters misconstrue Section 210.

First, as EchoStar pointed out in its comments in this proceeding, and as one of the Puerto Rico Stations acknowledges, the satellite mandatory carriage requirement in Section 338 of the Communications Act does not extend beyond Alaska and Hawaii to the territories and possessions.[3] Thus, it would be odd, to say the least, for the Commission to interpret Section 210's even more onerous scheme of carriage requirements as applying in areas that are not even subject to Section 338's "standard" must-carry provisions.

Second, the interpretation advocated by the Puerto Rico Stations must be rejected because it ignores a critical aspect of the statutory language. The distribution framework created by Section 210 depends upon the existing system of "local markets" that have been mapped out for the fifty States but do not exist in the territories and possessions. Specifically, Section 210 mentions "local markets" or "designated market area" no less than four times in specifying where satellite operators must distribute signals under Section 210.[4] The term "local market" is defined in Section 338(k)(3) by reference to 17 U.S.C. § 122(j), which provides that "'local market,' in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located," and further provides that "'designated

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[2] Comments of Encuentro Christian Network and Eastern Television Corporation (dated June 6, 2005) and Comments of International Broadcasting Corporation and R y F Television , Inc. (dated June 6, 2005).

[3] *See* Comments of International Broadcasting Corporation and R y F Television at 2; Comments of EchoStar Satellite L.L.C. at 4.

[4] *See* SHVERA, § 210 (codified at 47 U.S.C. § 338(a)(4)) (signals originating in any *local market* of the noncontiguous State must be carried and made available to substantially all subscribers in each station's *local market*, and signals from at least one *local market* shall be provided to those subscribers that reside outside a *designated market area*).

market area' ["DMA"] means a designated market area, as determined by Nielsen Media Research and published in the 1999-2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication."

Since there are no Nielsen DMAs in the territories and possessions, application of Section 210 to the territories and possessions would require the Commission to read the term "local market" out of Section 210. This the Commission cannot do. *See, e.g., U.S. v. Barnes*, 295 F.3d 1354, 1360 (D.C. Cir. 2002)("when construing a statute, we are obliged to give effect, if possible, to every word Congress used." (citations and internal quotation marks omitted); *Carus Chemical Co. v. EPA*, 395 F.3d 434, 440 (D.C. Cir. 2005) (articulating rule of statutory interpretation that "every word of a legal text should be given effect.") (citation omitted) Accordingly, the interpretation urged by the Puerto Rico Stations is not a permissible one.

Indeed, when Congress intended the provisions of Section 210 to extend beyond DMAs, it said so. Specifically, Congress addressed the unique fact that some areas of Alaska are not assigned to Nielsen DMAs. It instructed that "[a]ny census area, borough, or other area in the State of Alaska that is outside of a designated market area, as determined by Nielsen Media Research, shall be deemed to be part of one of the local markets in the State of Alaska."[5] Had Congress intended to stretch farther the scope of these obligations to areas that are not States and where there are no DMAs at all, it would have simply said so.

Finally, while extending the Section 210 requirements to Puerto Rico would be burdensome, the total burden attributable to the Puerto Rico Stations' interpretation of Section 210 would in fact be much greater. If Puerto Rico must be served as the stations suggest, all the territories and possessions must be served – the statutory language contains no proviso or

[5] 17 U.S.C. § 122(j)(2)(D).

guidance concerning how one territory or possession may be distinguished from another. Yet, as the Commission acknowledges, it is practically impossible as a technical matter for the U.S. Direct Broadcast Satellite ("DBS") operators to serve the Pacific territories.[6] All these additional burdens would dramatically tip the balance of the *O'Brien*[7] test towards a finding of unconstitutionality for Section 210.

For the foregoing reasons, EchoStar respectfully urges the Commission to reject suggestions that the Section 210 must-carry requirements be interpreted to cover the U.S. territories and possessions.

Respectfully submitted,

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[6] *See* NPRM at ¶ 7.

[7] *U.S. v. O'Brien*, 391 U.S. 367 (1968) sets forth the balancing test for evaluating the constitutionality of free speech restrictions such as must-carry obligations. As the Supreme Court explained in *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622 (1994) ("*Turner I*") and *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180 (1997) ("*Turner II*"), a must-carry requirement must further an important or substantial government interest and the burden imposed by the obligation must be commensurate to the benefits obtained.